

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

CIVIL ACTION NO:

FEDERAL NATIONAL MORTGAGE
ASSOCIATION

PLAINTIFF

v.

SHELDON A. SMITH AND DAWN E. SMITH
and MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS INC., AS
NOMINEE FOR BRYCO FUNDING, INC. and
BRYCO FUNDING, INC.

DEFENDANTS

COMPLAINT FOR FORECLOSURE

NOW COMES the Plaintiff, Federal National Mortgage Association, by and through its attorneys, Bendett & McHugh, P.C., and complains against the Defendants pursuant to 14 M.R.S. § 6321 et seq., saying further as follows:

JURISDICTION AND VENUE

1. This Court has diversity jurisdiction pursuant 28 U.S.C. § 1332 because the Plaintiff and Defendants are citizens of different states and the matter in controversy exceeds the sum or value of \$75,000.00. Any Court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested

party seeking such declaration, whether or not further relief is or could be sought under 28 U.S.C. § 2201.

2. Venue is properly exercised pursuant to 28 U.S.C. §1391(b)(2) insofar as all or a substantial portion of the events that give rise to the Plaintiff's claims transpired in Maine and the property is located in Maine.

PARTIES

3. Federal National Mortgage Association, ("Plaintiff"), is a corporation organized and existing under the laws of the United States of America, having a principal place of business at 3900 Wisconsin Avenue, NW, Washington, DC 20016-3899.
4. Sheldon A. Smith and Dawn E. Smith, ("Defendants"), are residents of Salem Township, County of Franklin and State of Maine.
5. Mortgage Electronic Registration Systems, Inc., as nominee for Bryco Funding, Inc., ("Defendant"), upon information and belief, has an address located at 1901 E. Voorhees Street, Suite C, Danville, IL 61834.
6. Bryco Funding, Inc., ("Defendant"), upon information and belief, has an address located at 580 California Street, 8th Floor, San Francisco, CA 94104.

FACTS

7. Defendants Sheldon A. Smith and Dawn E. Smith are the owners of certain real property located at 1357 Salem Road, Salem Township, Maine (the "Premises") by virtue of a deed from JLC Realty, dated October 28, 2005, and recorded in the Franklin County Registry of Deeds on November 7, 2005 in Book 2682 at Page 231 and being more particularly described by the attached legal description. *See* Exhibit A.

8. On July 22, 2013, Defendant Sheldon A. Smith executed and delivered to Green Tree Servicing, LLC a certain promissory note in the original principal amount of \$83,000.00 (the “Note”). *See* Exhibit B.
9. Plaintiff is entitled to enforce the Note as the Note is endorsed in blank.
10. Plaintiff certifies that the owner of the Note is Federal National Mortgage Association.
11. To secure said Note, in the amount of \$83,000.00, Defendants Sheldon A. Smith and Dawn E. Smith executed and delivered a Mortgage in favor of Mortgage Electronic Registration Systems, Inc., as nominee for Green Tree Servicing LLC, dated July 22, 2013 and recorded in the Franklin County Registry of Deeds in Book 3573 at Page 255 securing the property located at 1357 Salem Road, Salem Township, ME, 04983 (the “Mortgage”). *See* Exhibit C.
12. Said Mortgage was assigned from Mortgage Electronic Registration Systems, Inc., as nominee for Green Tree Servicing LLC to Plaintiff by an Assignment of Mortgage, dated June 14, 2018 and recorded on June 15, 2018 in Book 4004 at Page 126 of the Franklin County Registry of Deeds. *See* Exhibit D1.
13. Said Mortgage was assigned from Green Tree Servicing LLC to Plaintiff by a Quitclaim Assignment of Mortgage, dated August 15, 2018 and recorded on August 22, 2018 in Book 4023 at Page 277 of the Franklin County Registry of Deeds. *See* Exhibit D2.
14. Plaintiff, directly or through its agent, is in possession of the original Note, Mortgage and any assignments.
15. Plaintiff is the party entitled to collect the debt evidenced by said Note and is the party entitled to enforce the Mortgage, and has the right to foreclose the Mortgage.

16. Defendant Mortgage Electronic Registration Systems, Inc., as nominee for Bryco Funding, Inc. and Defendant Bryco Funding, Inc. claim or may claim an interest in the Premises by virtue of a mortgage, in the principal amount of \$21,200.00, dated March 12, 2007 and recorded in Book 2895 at Page 211 of the Franklin County Registry of Deeds. *See* Exhibit E. Said mortgage was subordinated to the Plaintiff's mortgage by virtue of a Subordination Agreement dated June 25, 2013 and recorded in Book 3573 at Page 273 of the Franklin County Registry of Deeds. *See* Exhibit F.
17. Defendants Sheldon A. Smith and Dawn E. Smith are presently in default of the Note, having failed to make the monthly payment due February 1, 2018, and having failed to make all payments due thereafter. As a result thereof, Defendants have breached a condition of the Mortgage.
18. In compliance with the Note and Mortgage and/or 14 M.R.S.A. § 6111, on or about August 30, 2018, Plaintiff sent a Notice of Default to the mortgagor and any co-signor against whom the mortgagee is enforcing the obligation secured by the mortgage, by certified mail, return receipt requested and/or by regular mail, postage prepaid (herein after referred to as the "Demand Letter"). *See* Exhibit G.
19. Defendants Sheldon A. Smith and Dawn E. Smith have failed to cure the default prior to the expiration of the Demand Letter. In accordance with the Note and the Mortgage, Plaintiff has declared the entire principal amount outstanding, accrued interest thereon, and all other sums due under the Note and Mortgage to be presently due and payable.

20. The total unpaid principal balance owed under the Note and Mortgage as of October 16, 2018, is \$73,257.38 plus interest in the amount of \$2,730.98, late charges, expenses and reasonable attorney's fees and costs.
21. Plaintiff anticipates that additional disbursements will be made for attorney's fees and other services rendered during the foreclosure and sale.
22. Upon information and belief, Defendants Sheldon A. Smith and Dawn E. Smith are presently in possession of the subject property originally secured by the Mortgage.

COUNT I – FORECLOSURE

23. Plaintiff repeats and re-alleges paragraphs 1 through 22 as if fully set forth herein.
24. This is an action for foreclosure and title to real estate located at 1357 Salem Road, Salem Township, ME, 04983, County of Franklin, and State of Maine. *See* Exhibit A.
25. Plaintiff is the holder of the Note pursuant to endorsement in blank by the previous holder and physical possession of the Note. As such, Plaintiff has the right to foreclosure upon the subject property.
26. Plaintiff Federal National Mortgage Association is the current owner and investor of the Mortgage and Note.
27. Defendants Sheldon A. Smith and Dawn E. Smith are presently in default on said Mortgage and Note, having failed to make the monthly payment due February 1, 2018. As a result, Sheldon A. Smith and Dawn E. Smith have breached the condition of the Mortgage and Note.

28. The total unpaid principal balance owed under the Note and Mortgage as of October 16, 2018, is \$73,257.38 plus interest in the amount of \$2,730.98, late charges, expenses and reasonable attorney's fees and costs.
29. The record established through the Franklin County Registry of Deeds indicates that there are no public utility easements recorded subsequent to the Mortgage and prior to the commencement of these proceedings affecting the mortgaged premises at issue herein.
30. By virtue of the Defendants' breach of condition, Plaintiff hereby demands a foreclosure on said real estate.
31. Notice in conformity with 14 M.R.S.A. §6111 was sent to Defendants Sheldon A. Smith and Dawn E. Smith on August 30, 2018 as evidenced by the Certificate of Mailing. *See* Exhibit H.
32. Defendants Sheldon A. Smith and Dawn E. Smith are not in the Military as evidenced by the attached Exhibit I.

COUNT 11 – UNJUST ENRICHMENT

33. Plaintiff repeats and re-alleges paragraphs 1 through 32 as if fully set forth herein.
34. Mortgage Electronic Registration Systems, Inc., as nominee for Green Tree Servicing LLC, predecessor-in-interest to Federal National Mortgage Association, loaned Defendants Sheldon A. Smith and Dawn E. Smith \$83,000.00. *See* Exhibit B.
35. Defendants Sheldon A. Smith and Dawn E. Smith have failed to repay the loan obligation pursuant to the terms of the Note and Mortgage.
36. As a result, Defendants Sheldon A. Smith and Dawn E. Smith have been unjustly enriched to the detriment of the Plaintiff as successor-in-interest to Mortgage Electronic

Registration Systems, Inc., as nominee for Green Tree Servicing LLC by having received the benefits described above without repayment pursuant to the terms of the Note and Mortgage.

37. As such, Plaintiff Federal National Mortgage Association is entitled to relief

PRAYERS FOR RELIEF

WHEREFORE, Plaintiff, Federal National Mortgage Association, prays this Honorable Court:

Find that the Defendants entered into a contract for a sum certain in exchange for a security interest in the subject property.

- a. Determine that there has been a breach of condition of the Mortgage;
- b. Find that Plaintiff is entitled to enforce the terms and conditions of the Note and Mortgage;
- c. Determine the amounts due under the Note and secured by the Mortgage, including principal, interest, reasonable attorney's fees, court costs and other expenses;
- d. Find that Defendant Sheldon A. Smith is liable for any deficiency balance remaining due to Plaintiff after the sale of the mortgaged real estate and application of the proceeds of sale (this prayer is void for any Defendant that did not execute the Note or Guaranty and for any Defendant who has been granted discharge in bankruptcy);
- e. Issue a Judgment of Foreclosure and Sale in conformity with Title 14, M.R.S. § 6322;

- f. Order exclusive possession of the real estate to Plaintiff upon the expiration of the statutory ninety (90) day period of redemption and direct the clerk to issue a Writ of Possession at the request of Plaintiff;
- g. Find that by virtue of the Note and Mortgage, Defendants Sheldon A. Smith and Dawn E. Smith have been unjustly enriched at the Plaintiff's expense;
and
- h. Order such other and further relief as this Honorable Court deems just and proper.

Respectfully submitted,

Federal National Mortgage Association

By its Attorneys,
BENDETT & MCHUGH, P.C.

Dated: 10/18/2018

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